APPEAL NO. 010261

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 23, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain an occupational disease and that the claimant timely notified his employer of the claimed occupational disease. The claimant appealed the hearing officer's decision that he did not sustain an occupational disease and the respondent (carrier) responded.

DECISION

The hearing officer's decision is affirmed.

The claimant claims a repetitive trauma injury. The claimant began working for the employer in August 1999. He said that for the first six weeks of his employment he spent four hours of his workweek cleaning out the furnace and that that job required a lot of bending, stooping, pulling, and lifting to shovel slag from the furnace and put it into a dumpster. The claimant said that he would sometimes have soreness in his lower back while doing that job. The claimant said that after the first six weeks of work, he began driving a forklift eight to ten hours a day and that sometimes he would have to stand on the forklift to latch on a dumpster and would sometimes have to get off the forklift to unlatch a dumpster, which required some lifting, and to adjust the forks and that that work was stressful on his back. The claimant said that in _____ he fell off the forklift but that he had no problems related to that fall. He said that in _____ he began having pain that went from his left hip down to his foot and that he began going to a medical clinic in February 2000 because of his pain. The medical clinic records of February 2000 note complaints of back pain radiating down the left leg. The claimant said that he was not exactly sure what he did to hurt his back but that he did a lot of bending, pulling, and lifting to get slag out of the furnace and that he first thought that he had a work-related injury when he met with his attorney on April 10, 2000. The claimant said that he believes his back injury occurred over time. He said he went on medical leave on February 9, 2000.

The claimant underwent a lumbar spine MRI in February 2000 and the radiologist reported that the claimant has a small left-sided protrusion of the disc at L4-5 with a slight effacement of the nerve root. The claimant's attorney referred him to Dr. C, a chiropractor, who reported that the claimant is suffering from a repetitive stress sprain/strain of the lumbar spine that had progressed over time into a disc disorder with associated neurological problems and that this was caused by the claimant's job duties over a long period of time. The claimant said that his attorney also referred him to Dr. P, a chiropractor, who reported that the claimant suffers from a herniated disc at L4-5, which resulted from repetitive injuries at work, and also noted the fall from the forklift.

Section 401.011(37) defines "repetitive trauma injury" as "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic

activities that occur over time and arise out of and in the course and scope of employment." An occupational disease includes a repetitive trauma injury. Section 401.011(34). In Texas Workers' Compensation Commission Appeal No. 010147, decided March 6, 2001, the Appeals Panel noted that proof of a repetitive trauma injury should consist of some presentation of the duration, frequency, and nature of the activities alleged to be traumatic. The hearing officer found that the quality and quantity of the claimant's repetitive activities was not adequately established; that the claimant was not exposed to repetitious, physically traumatic activities at work; and that the evidence was insufficient to establish a causal connection between the claimant's lower back symptoms and his work-related activities. The hearing officer concluded that the claimant did not sustain an occupational disease.

It is clear from the hearing officer's decision that he did not find the claimant's evidence persuasive on the issue of occupational disease. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge